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REPLY TO: ROCHESTER

December 20, 2024

VIA E-MAIL

Hon. Lawrence J. Vilardo
United States District Judge
United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: *United States v. Payton Gendron*, 22-CR-109-LJV, further JSSA requests

Dear Judge Vilardo:

Thank you for the opportunities to speak with Joel Drier and Patrick Healy on October 17th and during our review of the grand jury questionnaire forms on November 18th and 19th. We appreciate Mr. Drier's written responses to our proposed questions and amended AO-12 forms from 2020, 2021, and 2022 that we received on November 18, 2024. We also provided Mr. Drier with the juror identification numbers from the summoned list for which we were not provided a juror questionnaire form, juror identification numbers that did not appear on the summoned list for which we were provided questionnaire forms to review, and a list of missing summons sequence numbers. Mr. Drier responded with some information about these discrepancies during our review of the juror questionnaire forms on November 18th and 19th. It is respectfully requested that these documents be filed to ensure a complete record. We respectfully submit the following additional requests for disclosure and seek that the Court order that the requested items be provided to us.

Item 6 – Form AO-12

Regarding Items 6(d) and 6(e), we asked for confirmation that the census numbers were correctly reported and related to the Rochester or Buffalo Divisions, along with confirmation of the size of the Buffalo wheel in light of its size changing from 30,000 (for the 2017, 2018, and 2020 AO-12 forms) to over 60,000 (for the 2021, 2022, and 2023 AO-12 forms).

During our October meeting, Mr. Drier had explained that the most recent census numbers for the AO-12 forms completed 1/21/2021, 1/19/2022 and 2/14/2023 were automatically filled in by the JMS program. As the figures were automatically generated, Mr. Drier was willing to check with Avenu Insights as to the accuracy of the numbers in the more recent AO-12 forms from 2020, 2021 and 2022 including whether the numbers reflected Buffalo data exclusively.

We learned during discussion on November 18th that Mr. Drier has discovered that the census information contained in some of the AO-12 forms was incorrect and he has since generated new AO-12 forms reflecting numbers for Buffalo. We were provided with these updated AO-12 forms on November 18th relating to 2020, 2021 and 2022. After reviewing the updated AO-12 forms from 2020, 2021, and 2022 we believe that they still contain incorrect census numbers. The total population (including persons who are not citizens of the United States) from 2020 is used while the AO-12 form calls for the numbers for United States citizens only. Our analysis will use the updated 2022 census numbers for persons aged 18 and over who are citizens of the United States.

Request: In light of the above, we request to be provided with updated AO-12 forms with the correct numbers.

Item 11 – Written Instructions

Mr. Drier and Mr. Healy explained at our October meeting that the creation of the Master Jury Wheel is completed by Mike Sutera, a vendor. As to Items 11(a), (b), and (c), during the same meeting we discussed what types of responsive documents might exist. Regarding the 2021 wheel, Mr. Drier and Mr. Healy explained that the materials were mostly likely limited to emails with the vendor, Mike Sutera. It was not known whether these emails included relevant attachments. Mr. Drier and Mr. Healy further explained during our October meeting that communications with Mr. Sutera included instances of Sutera sending to them a description of the work he had done. It was unclear whether any specifications or instructions relating to the process were written or informal.

Request: We request disclosure of documents, including communications and attachments between the vendor and the Jury Administrator/Clerk that are responsive to our requests under Item 11. To be clear, we are not requesting disclosure of materials unrelated to our request such as communications relating purely to scheduling.

Also during our October meeting, Mr. Drier and Mr. Healy explained that, as to Item 11(d), they inquired of the vendor, Mike Sutera, whether written instructions exist as to the process Sutera used to create the Master Jury Wheel. Mr. Healy also pointed out at that time that anything that Sutera had to produce would probably cost money and take time.

Request: We respectfully request information regarding this inquiry and, if they exist, disclosure of written instructions.

Regarding Item 11(e), we inquired as to whether the answer supplied related to other years and during our October meeting Mr. Drier informed us that this is something he would look into.

Request: We request follow up information on this inquiry by Mr. Drier. We also request, in connection with Item 11(e), whether Mr. Sutera has information relating to the process he used to create the Master Jury Wheel and, if so, we request that this information be disclosed. Finally, as to Item 11(e), we request confirmation of whether the previously supplied answer related to other years.

Item 19 – Specifications for Merging Sources

During our October meeting, Mr. Healy and Mr. Drier made clear that any responsive material would come from Mike Sutera, the vendor.

Request: We request disclosure of responsive materials under this item including materials in the custody of Mr. Sutera.

Item 22 – Summoned Jurors

Also during our October meeting, Mr. Drier told us that information containing the participant number, without PII, for those summoned to potentially serve on the March 2022 Grand Jury was available through JMS and was simple to produce. While it would not be difficult for him to produce this information, he pointed out that the Court would need to issue an order before he could release it. We understand that the Court has since authorized the disclosure of this information and Ms. Stelianou provided it to us via email on November 18th. We view this request as completed.

Item 23 – Source Data

During our October meeting, we discussed whether Mr. Sutera alone received the source data or whether it was also provided to the Jury Administrator. Mr. Drier explained that the data was provided both to him and to Mike Sutera. Mr. Drier informed us during this meeting that their IT people would destroy the source data after they received it. Mr. Drier did not know whether Mike Sutera retained any of the source data and additional information would be needed from him as to what, if any, data he retained.

Request: We ask for information relating to whether Mr. Sutera retained any of the source data and, if so, we request the opportunity to inspect it. We also request disclosure of communications between the data sources and both the Jury Administrator and Mr. Sutera including cover letters. In the event that the source data has been deleted by Mr. Sutera, information from these communications will assist us in reconstructing the source data.

Item 27 – Public Records

Mr. Drier and Mr. Healy explained during our October meeting that sub-item 3, jury memos from the Administrative Office and internal Memos, would consist of emails with chambers about the details of grand jury selection.

Request: We request that these records be disclosed to us with a six-year lookback as we

received for the AO-12s.

Juror Questionnaire Forms

Based on our review of juror questionnaire forms on November 18th and 19th, we have several further requests. Although the Court has previously authorized him to provide the questionnaire forms of summoned jurors, we request that Mr. Drier provide us with missing juror questionnaire forms for the following Juror identification numbers that we supplied to him on November 18, 2024.

100904194	100904883	100907449	100914165	100914464	100916940
100918011	100918260	100920768	100923662	100923837	100926136
100927306	100932851				

We further request that Mr. Drier provide us with the questionnaire forms and associated Juror identification numbers for the following missing pool sequence numbers that we supplied to him on November 18, 2024.

6	7	51	154	163	203	216	280	297	309	331
381	415	516	544	560	576					

We also request that the Court authorize Mr. Drier to supply the following information.

Request: Are people being deferred into the master jury wheel for the grand jury? If so, who? Further, if these deferred individuals' questionnaires are not within those we were reviewing, we request that the Court authorize Mr. Drier to provide them to us for inspection.

Thank you for considering these additional requests.

Respectfully submitted,

/s/Anne M. Burger

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/s/Sonya A. Zoghlin

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/s/MaryBeth Covert

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